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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 226.

HENRY W. URQUHART,
as Sheriff of Lewis County,
Washington,
Appellant,
v.
THOMAS BROWN,
Respondent.

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Appeal from the Circuit Court of the United States for the Western District of Washington.

BRIEF OF APPELLANT.

E. C. MACDONALD,
Assistant Attorney General.
Solicitor for Appellant.

JOHN D. ATKINSON,
Attorney General,
A. J. FALKNOR,
Assistant Attorney General,
J. R. BUXTON,
Prosecuting Attorney,
Of Counsel.

C. W. GORHAM, PUBLIC PRINTER.

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Appeal from the Circuit Court of the United States for the Western District of Washington.

STATEMENT OF THE CASE.

The respondent was tried before a jury of the Superior Court of the State of Washington in and for Lewis County, upon an information charging him with the crime of murder. The respondent pleaded not guilty, and urged in his defense insanity caused by epilepsy, cruel treatment by his father and the degeneracy of the latter, prior to the birth of the respondent; he offered proof during the trial of continuous and permanent insanity from said cause and his demeanor during the trial appeared to be consistent with his claim of general insanity. The trial resulted in a verdict of acquittal "by reason of insanity." (Record, page 6.)

Section 6959 of Ballinger's Codes and Statutes of Washington provides as follows:

"When any person indicted or informed against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the Court manifestly dangerous to the peace and safety of the community, the Court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds, with surety to the satisfaction of the Court, conditioned that he shall be well and securely kept, otherwise he shall be discharged."

Acting in pursuance of this statute, the Superior Court of Lewis County then ordered the committment of the respondent to the county jail of Lewis County, until the further order of the Court.

The respondent, having been reincarcerated in jail pursuant to the order of the Court, applied to the Supreme Court of the State of Washington for discharge from imprisonment by a writ of habeas corpus. The Supreme Court, finding no constitutional objections to the statute, denied the writ. (Record, page 11.)

The respondent thereafter applied to the Circuit Court of the United States for the Western District of Washington for a writ of habeas corpus, alleging in his petition that he was detained in prison by virtue of the above quoted statute, and that the same was unconstitutional and in violation of the fourteenth amendment to the Constitution of the United States, particularly to that portion thereof which provides that "nor shall the state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The appellant demurred and then answered to the petition, setting up the facts stated above.

The cause was heard upon the petition, the demurrer and answer, and the Circuit Court granted the writ of habeas corpus, filing a written opinion in the case. (Record, page 16.)

ASSIGNMENTS OF ERROR.

I.

That the Court erred in finding that the complainant was unlawfully or illegally restrained of his liberty by the respondent, Henry W. Urquhart, as Sheriff of Lewis County, Washington.

II.

That the Court erred in finding that the order of committment of the Superior Court of Lewis County, Washington, under which the complainant was committed and held, was void and illegal.

III.

That the Court erred in ordering and decreeing that the complainant be freed and released from the county jail of Lewis County, Washington, and from the custody of the respondent

ARGUMENT.

The above assignments of error will be argued as one because the only question in the case is as to whether or not the statute referred to above is constitutional. The learned judge below, by giving the statute in question a different construction than that given it by the Supreme Court of the State of Washingon, holds the statute constitutional, but directed the liberation of the prisoner upon the ground that the Superior Court had not strictly followed the provisions of the law cited. But it should be remembered that it is the duty of the Federal Courts, in interpreting a state statute, to construe it as settled by the court of last resort of the state, and will only form an independent judgment as to the meaning of the state law, when there is no binding construction of such statute by the court of last resort of the state.

Sioux City Terminal & Warehouse Co. v. Trust Co., 173 U. S. 99.

Noble v. Georgia, 168 U. S. 398.

First Nat. Bank v. Chehalis Co., 166 U. S. 440.

Morley v. Railway Co., 146 U. S. 166.

As the statute in question was construed in the highest court of the State of Washington in the case of *In the Matter of the Appplcation of Thomas Brown for a Writ of Habeas Corpus*, 39 Washington 160, the court below was bound to consider such construction as an integral part of the statute, and had no jurisdiction to adjudge whether or not the construction placed upon the statute by the state court was right. Its sole duty was to decide whether or not the statute as construed by the Supreme Court of the State was constitutional. By ordering the respondent released from the custody of the appellant, the lower court, in effect, held the statute to be unconstitutional.

So the issue before the Court is simply whether or not the statute as construed by the Supreme Court of the State of Washington is constitutional. It is claimed by the respondent that it is unconstitutional in that it denies him due process of law.

The first inquiry would naturally be, what is "due process of law." It has been generally held to be a synonymous term with "the law of the land," which was defined by Mr. Webster in his argument in the case of *Dartmouth College v. Woodward*, 4 Wheaton 518, as:

"By the law of the land is most clearly intended the general law, a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial."

In the light of the above definition in what way has the respondent been deprived of the due process of law? Was respondent not heard before he was condemned? Was there not an inquiry and trial before judgment? We contend that there were, and that the statute violates none of the constitutional rights of the respondent. At the trial of respondent for the murder of his father, he pleaded, in defense of the crime for which he was being tried, permanent insanity, produced and caused by epilepsy, degeneracy of his father, and cruel and abusive treatment. That is, the respondent tendered, and there was submitted to the jury, under proper instructions of the Court, the question of his sanity, and upon that question he was heard as fully and completely as it was possible for a person to be heard. Witnesses were sworn, the jury was instructed, and under the law a special verdict upon that particular issue was determined. Now surely the fact that the statute permits the issue of sanity to be tried at the same time as the issue of guilt, does not render the statute unconstitutional or deprive the respondent of due process of law. He was given all the rights and privileges that he would have had, or could lawfully have demanded, upon a separate trial of the issue of sanity. He was accorded a jury to try his sanity, had the opportunity to confront and cross-examine, the opportunity to adduce testimony in his own behalf and to testify himself if he saw fit. Even the respond-

ent will not deny the state's right to protect itself from the acts of an insane person, or to protect the insane person from his own acts, by incarcerating such person in a hospital or prison. It is only requisite that the person be adjudged insane by a court of competent jurisdiction, after a trial according to the regular forms of law, where the accused person had an opportunity to appear and make a defense. It cannot be denied that the statute in question provides the most logical method of trial when insanity is urged in defense of crime because the issues are so interdependent that they should be tried together; either the prisoner is sane and guilty of the crime, or insane and a fit subject for the state's guardianship.

The respondent urged most strenuously in the court below that the respondent was denied due process of law because the jury's finding that he was insane must have had reference to the time when he killed his father, while the order of committment was not signed until four months after the murder. In other words, his contention is that his mental condition may have changed in the interval between the date of the offense and the date of the trial, and that therefore a finding that he was insane when he committed the offense was no proof that he was insane when committed to prison. In this connection it should be remembered that nowhere in his petition does the respondent claim that he is now sane. He practically admits that his mental condition has not changed since he alleged, and the jury found, that he was insane; but simply contends that he was committed to prison by the wrong process.

The fallacy of respondent's position is his assumption that insanity is not presumed to be a continuous state. It is well settled that when a person is once found to be habitually insane, the burden is upon such person to prove his restoration to a sane condition, for insanity is presumed to continue until the contrary is shown.

"The presumption being that general insanity once shown to exist still continues unless of a temporary sort, like the delirium of drunkenness or a fever, the burden of proof to establish a lucid interval or mental restoration rests upon the party who asserts it." Schouler on Wills (3d ed.), Sec. 189 and cases cited.

The American & English Encyclopedia of Law (2d ed.), at page 604 of volume 16, states the rule as follows:

"When habitaual insanity in the mind of the person whose act is in question is once established, then the party who would take advantage of the fact or restoration to a sane condition, or an interval of reason, must prove it, for insanity of that character is presumed to continue until the contrary is shown."

Decisions from twenty-six of the American states are cited in support of the above rule, as well as a long list of English decisions.

The law being that a person who has once been found to be permanently insane is presumed to continue so until the contrary is shown, the burden is upon respondent to prove that he has recovered his reason. The record shows that the proof offered at the trial was of continuous and permanent insanity, induced by epilepsy and congential conditions. The solemn verdict of the jury upon this testimony was that the respondent was insane. The Court simply entered a judgment that was in accordance with the verdict of the jury. No contention is made by the respondent that his mental condition has changed since the date of the murder. No change having been shown to have occurred in his mental condition, the Court was fully justified in committing him to prison until restoration to sanity.

Respondent further complains that he was deprived of due process of law because he was committed "until the further order of the Court." He asserts that the order of commitment was bad because he was not committed for a definite and certain time.

It needs no citation of authorities to sustain the contention that a commitment of an insane person for a definite period would be contrary to law. The very necessity of the case requires that the commitment should be for an indefinite length of time. The commitment of an insane person to a hospital or prison is not a punishment

for crime, but is simply the state's exercise of its right to protect itself against the acts of an irresponsible person. As soon as the person recovers his sanity the state's right of guardianship over him should cease and he is entitled to be restored to his liberty. It will be readily seen that a commitment for an indefinite period is the only practicable method of dealing with the insane. When committed "until the further order of the Court," the prisoner or patient has the right at any time to come into Court, assert his sanity, have the issue tried, and if found sane, be discharged.

"If it be allowable to assume that the insanity found to exist at one time still continues, and on that ground to commit the party to an asylum as presumptively insane, still the supposed non compos would have a right to disprove this presumption at any time. To deny him the right to have his case investigated on the facts at any time, would be to distinguish his case from that of other insane persons; and this must be justified on legal ground. It certainly would not be justified on the ground that the jury had rendered an improper verdict; the verdict must be taken as correct. But as no other ground can possibly be suggested, it must follow that the restraint of liberty, though based upon a verdict which found the existence of insanity, must be made to cease whenever a judicial investigation, which is a matter of right, shall determine that insanity does not exist. It is not possible constitutionally to provide that one shall be imprisoned as an insane person who can show that he is not insane at all." Cooley on Torts (2d ed.), note to star page 178.

The cases upon the point in issue are very few; whether it is because there are few similar statutes or whether it is because most men acquitted of murder by reason of insanity are willing to suffer a short imprisonment as insane is not material.

The case most relied upon by the respondent in the court below was that of *Underwood v. People*, 32 Mich. 1, but a reading of the case discloses the fact that the decision of the Court turned upon a peculiar feature in the Michigan statute. The statute provided that one acquitted of crime by reason of insanity should remain confined in an asylum until an investigation as to his restoration to sanity should be set in motion by the prison inspectors. The Su-

preme Court of Michigan held the statute to be unconstitutional upon the ground that:

"The proceedings contemplated by it are not only inquisitorial and *ex parte*, but they cannot be set in motion except at the will of the prison inspectors, so that practically the liberty of the person confined is left to depend upon the uncontrolled pleasure of the inspectors."

It will readily be seen that this case has no bearing upon the question at issue here, as our statute makes no attempt to prevent the person confined from initiating a judicial investigation as to his restoration to sanity.

The following citations show conclusively that the statute in question does not deny the respondent due process of law:

"Where a person is acquitted by the verdict of the jury on the ground of insanity, the Federal Court will remand him to the custody of the marshal, on being satisfied that it would be dangerous to permit him to be at large while under mental delusion."

United States v. Lawrence, Federal Cases, No. 15,577 (4 Cranch C. C. 518).

"Where one having committed a homicide had been sent to the house of correction pursuant to the statute of 1797 (Chapter 61, section 3), as a person dangerous to go at large, and was then tried for murder, and acquitted on the ground of insanity, the Court remanded him to the house of correction until he should be duly discharged."

Commonwealth v. Meriam, 7 Mass. 168.

"Where one charged with a misdemeanor is acquitted upon the ground of insanity, an order committing him to an insane asylum is not a sentence; and it is competent for the Court to certify his last place of legal settlement, after the expiration of the term at which such order was made."

Clearfield County v. Cameron Township Poor District, 135 Pa. St. 86, 19 Atl. Rep. 952.

With the right of the relator at any time to petition the court to make an order for the review of the question of his sanity, and the right to have the question of the restoration of his mind and

reason tried, it cannot be contended that the judgment entered here by the Superior Court amounts to a perpetual imprisonment. If the relator were to enter a proceeding to establish the restoration of his mind and reason and the lower Court should find against him he would have the right of appeal, and with this right of hearing and right of review it cannot be said that the statute does not afford an opportunity of showing mental restoration.

We respectfully submit that the judgment of the lower Court should be reversed.

E. C. MACDONALD,
Assistant Attorney General.
Solicitor for Appellant.

JOHN D. ATKINSON,
Attorney General,
A. J. FALKNOR,
Assistant Attorney General,
J. R. BUXTON,
Prosecuting Attorney,
Of Counsel.